

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1855 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BHARTIBEN C DAVE

Versus

STATE OF GUJARAT

Appearance:

MR RK MISHRA for Petitioner

MR VB GHARANIA for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 21/04/99

ORAL JUDGEMENT

#. Heard the learned counsel for the parties.

#. The total contribution of the State of Gujarat in this special civil application is that though more than two years have already passed from the date of admission of this matter reply to the writ petition has not been filed. In the absence of reply of the respondents, the

averments made by petitioner in this special civil application are taken to be admitted as being uncontroverted and accordingly the same are taken to be admitted. So it is uncontroverted fact that on 1.12.86, the petitiionr was appointed on the post of Assistant Teacher. On that date, she was qualified B.A.,B.Ed.. It is true that she has been given the pay scale of untrained teacher and she continued to draw this pay in the aforesaid scale.

#. Challenge has been made by petitioner in this special civil application to the order of the Deputy Director, Primary Education, Gandhinagar, dated 4.3.96, under which her services were ordered to be dispensed with on the ground that she is not a trained teacher.

#. This matter is squarely covered by series of decisions of this Court. The petitioner has also given reference to two such decisions of this Court in para-3 of the special civil application and those averments have also not been controverted by respondents, meaning thereby, it is also admitted that this matter is covered by the two decisions of this Court referred to in para-3 of the special civil application. I have also taken a view in the case of Rameshchandra J Gohel v. State of Gujarat, in Special Civil Application No.1958 of 1989 decided on 3.9.97 that the candidates possessing qualification of B.A., B.Ed. are to be taken as trained teachers on the date of of their appointment as primary teachers.

#. In the result, this special civil application is allowed and the order, annexure-A, dated 4.2.96 is quashed and set aside. It is declared that the petitioner shall be taken to be a trained teacher from the date on which she joined the services in pursuance of the order dated 1.12.86 and her pay shall be accordingly fixed in the pay scale of a trained teacher notionally on 1st March 1996. From 1st March 1996, she shall be entitled for actual benefits. The petitioner has not been given actual benefits of the pay scale of trained teacher from the date of her appointment for the reason that she herself has not made any grievance against the order of respondents to appoint her as a untrained teacher. Only after the order, annexure-A, she has gone before the Gujarat Primary Education Tribunal, and then withdrew the application and filed this special civil application. The respondents are further directed to pay interest on the the aforesaid amount at the rate of 12% p.a. The respondents are also directed to pay to the petitioner, Rs.3,500/- by way of costs of this petition

as what the learned counsel for the petitioner states that this much of amount has been spent by petitioner being the amount of professional fees paid to the advocate and other expenses incurred by her for filing of the writ petition. Rule made absolute accordingly.

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[sunil]